

(3) *Franchised public utility* means a public utility with a franchised service obligation under state law.

(4) *Market-regulated power sales affiliate* means any power seller affiliate other than a franchised public utility, including a power marketer, exempt wholesale generator, qualifying facility or other power seller affiliate, whose power sales are regulated in whole or in part on a market-rate basis.

(5) *Non-utility affiliate* means any affiliate that is not in the power sales or transmission business, other than a local gas distribution company or an interstate natural gas pipeline.

(b) The provisions of this subpart apply to all franchised public utilities that have captive customers or that own or provide transmission service over jurisdictional transmission facilities.

§ 35.44 Protections against affiliate cross-subsidization.

(a) *Restriction on affiliate sales of electric energy.* No wholesale sale of electric energy may be made between a franchised public utility with captive customers and a market-regulated power sales affiliate without first receiving Commission authorization for the transaction under section 205 of the Federal Power Act. This requirement does not apply to energy sales from a qualifying facility, as defined by 18 CFR 292.101, made under market-based rate authority granted by the Commission.

(b) *Non-power goods or services.*

(1) Unless otherwise permitted by Commission rule or order, and except as permitted by paragraph (b)(4) of this section, sales of any non-power goods or services by a franchised public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, including sales made to or through its affiliated exempt wholesale generators or qualifying facilities, to a market-regulated power sales affiliate or non-utility affiliate must be at the higher of cost or market price.

(2) Unless otherwise permitted by Commission rule or order, and except as permitted by paragraphs (b)(3) and (b)(4) of this section, a franchised public utility that has captive customers

or that owns or provides transmission service over jurisdictional transmission facilities, may not purchase or receive non-power goods and services from a market-regulated power sales affiliate or a non-utility affiliate at a price above market.

(3) A franchised public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, may only purchase or receive non-power goods and services from a centralized service company at cost.

(4) A company in a single-state holding company system, as defined in § 366.3(c)(1) of this chapter, may provide general administrative and management non-power goods and services to, or receive such goods and services from, other companies in the same holding company system, at cost, provided that the only parties to transactions involving these non-power goods and services are affiliates or associate companies, as defined in § 366.1 of this chapter, of a holding company in the holding company system.

(c) *Exemption for price under fuel adjustment clause regulations.* Where the price of fuel from a company-owned or controlled source is found or presumed under § 35.14 to be reasonable and includable in the adjustment clause, transactions involving that fuel shall be exempt from the affiliate price restrictions in § 35.44(b).

[73 FR 11025, Feb. 29, 2008, as amended by Order 707-A, 73 FR 43083, July 24, 2008]

Subpart J—Credit Practices In Organized Wholesale Electric Markets

SOURCE: Order 741, 75 FR 65962, Oct. 27, 2010, unless otherwise noted.

§ 35.45 Applicability.

This subpart establishes credit practices for organized wholesale electric markets for the purpose of minimizing risk to market participants.

§ 35.46 Definitions.

As used in this subpart:

(a) *Market Participant* means an entity that qualifies as a Market Participant under § 35.34.